

APPEAL NO. 162488
FILED FEBRUARY 14, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 29, 2016, and on November 1, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to the left knee bicompartmental chondromalacia and left knee degenerative joint disease; (2) the compensable injury of (date of injury), does extend to the meniscal tears in the left knee; (3) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on October 9, 2015; and (4) the claimant's impairment rating (IR) is four percent.

The claimant appealed that portion of the hearing officer's extent-of-injury determinations that was not favorable to her as well as the determinations of MMI and IR. The claimant contends that the evidence established the compensable injury extends to left knee bicompartmental chondromalacia and left knee degenerative joint disease. Additionally, the claimant contends that the certification from the designated doctor that she reached MMI on October 9, 2015, with an eight percent IR should be adopted. The respondent/cross-appellant (self-insured) responded, urging affirmance of the disputed determinations.

The self-insured appealed that portion of the hearing officer's extent-of-injury determination that the compensable injury extends to the meniscal tears in the left knee. The appeal file does not contain a response from the claimant to the self-insured's appeal.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the self-insured has accepted a (date of injury), compensable injury in the form of a left knee contusion; the date of statutory MMI in this case is October 9, 2015; and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. W) as designated doctor with regard to extent of injury, MMI, and IR. The claimant testified she was injured when a co-worker pushed a knee high sized table and it struck her left knee.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury does not extend to left knee bicompartamental chondromalacia and left knee degenerative joint disease is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the compensable injury extends to the meniscal tears in the left knee is supported by sufficient evidence and is affirmed.

MMI

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

Dr. W examined the claimant on October 30, 2015, and provided two certifications. One certification was based on a left knee contusion and left knee medial meniscus tear. In that certification, Dr. W explained that the left medial meniscus tear required two arthroscopic procedures and physical therapy following the second procedure was concluded on April 8, 2015. Dr. W stated he would consider this to be the date of MMI, and assigned a four percent IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). Dr. W further explained that for the disputed conditions of left knee bicompartamental chondromalacia and degenerative joint disease the claimant reached statutory MMI on October 9, 2015, and assigned an eight percent IR.

The hearing officer found that Dr. W's certification of an October 9, 2015, MMI date with an eight percent IR is contrary to the preponderance of the other medical evidence. That finding is supported by the evidence. However, the hearing officer mistakenly found that Dr. W alternatively found that the claimant reached MMI on October 9, 2015, with a four percent IR. There is no certification in evidence from Dr. W that certifies an MMI date of October 9, 2015, with a four percent IR. The evidence reflects that for the conditions determined to be compensable, a left knee contusion and left knee meniscal tears, Dr. W certified that the claimant reached MMI on April 8, 2015, rather than October 9, 2015, and assigned a four percent IR. Dr. W's certification that the claimant reached MMI on April 8, 2015, with a four percent IR considering and rating the entire compensable injury is supported by the evidence. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on October 9, 2015,

and render a new decision that the claimant reached MMI on April 8, 2015, to conform to the evidence.

IR

The hearing officer's determination that the claimant's IR is four percent is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the hearing officer's determination that the compensable injury does not extend to the left knee bicompartmental chondromalacia and left knee degenerative joint disease.

We affirm the hearing officer's determination that the compensable injury extends to the meniscal tears in the left knee.

We affirm the hearing officer's determination that the claimant's IR is four percent.

We reverse the hearing officer's determination that the claimant reached MMI on October 9, 2015, and render a new decision that the claimant reached MMI on April 8, 2015.

The true corporate name of the insurance carrier is **ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**TOM CROWE, SUPERINTENDENT
801 NORTH SAM HOUSTON
ODESSA, TEXAS 79761.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge